

PROB. 12B
(7/93)

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States District Court

for the

DISTRICT OF HAWAII

AUG 05 2008

at 10 o'clock and 35 min. A.M. y
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: KIMO PRESTERA-JOHNSON Case No.: CR 04-00433SOM-01

Name of Sentencing Judicial Officer: The Honorable Susan Oki Mollway
U.S. District Judge

Date of Original Sentence: 6/27/2005

Original Offense: Counts 1-3: Bank Robbery, in violation of 18 U.S.C. § 2113(a), a Class C felony.

Original Sentence: Thirty-six (36) months imprisonment as to each of Counts 1, 2 and 3, to run concurrently, and three (3) years of supervised release with the following special conditions: 1) That the defendant execute all financial disclosure forms requested by the Probation Office and provide access to the Probation Office and the Financial Litigation Unit of the U.S. Attorney's Office to any requested financial information, to include submitting to periodic debtor's examinations; and 2) That the defendant is prohibited from the possession and use of alcohol. The Court also ordered restitution in the amount of \$10,039.91.

Type of Supervision: Supervised Release Date Supervision Commenced: 5/30/2007

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision (mandatory condition).

Special Condition No. 3: That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1. General Condition	The subject admitted using marijuana on or about 7/8/2008.

On 7/17/2008, the subject reported to the Probation Office for a scheduled office visit. At the commencement of the visit, the subject was administered a urine analysis drug test. The subject's urine specimen tested presumptive positive for THC on a non-instrumented drug testing device.

The subject was questioned regarding the positive test. Initially, the subject denied using any drugs. However, upon further questioning, the subject related that on or about 7/8/2008, he had unintentionally consumed two marijuana brownies. The subject stated that he found out the brownies contained marijuana after he "began feeling the effects." The subject further admitted that since 7/8/2008, he had been consuming large amounts of water and tea to flush out his system. The subject was verbally admonished for using marijuana, for not reporting the use to this officer, and for associating with people who were engaging in criminal activity.

The subject has an extensive history of drug use. According to the presentence report, the subject started smoking marijuana at the age of 15 or 16. Furthermore, the subject reported that at the time of his arrest for the current offense, he was using marijuana on a daily basis. The subject's recurrent use of marijuana dictates the need for additional drug testing. As a result, given the ruling in U.S. v Stephens, the recommended modifications will enable the Probation Office to implement controlling strategies to detect substance abuse and ensure that the subject does not reinvolve himself in noncompliant behavior.

Prob 12B
(7/93)

3

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modification and have no objections to the modification.

Respectfully submitted by,



JOHN T. HISASHIMA
U.S. Probation Officer

Approved by:

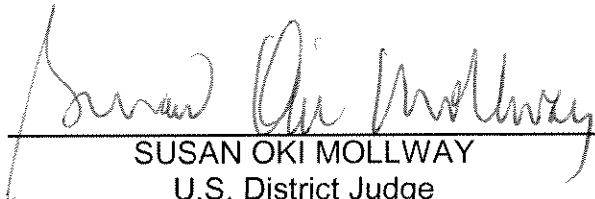


PETER D. YOSHIHARA
Supervising U.S. Probation Officer

Date: 7/25/2008

THE COURT ORDERS:

☒ The Modification of Conditions as Noted Above
☐ Other



SUSAN OKI MOLLWAY
U.S. District Judge

8/4/08

Date

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

[X] To modify the conditions of supervision as follows:

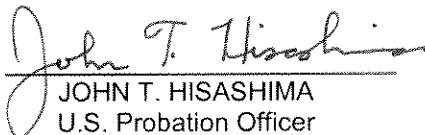
General Condition:

That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision (mandatory condition).

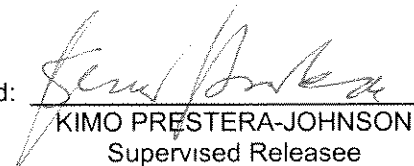
Special Condition No. 3:

That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Witness:


JOHN T. HISASHIMA
U.S. Probation Officer

Signed:


KIMO PRESTERA-JOHNSON
Supervised Releasee

7/23/08

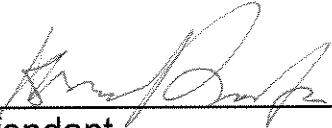
Date

NOTICE REGARDING MODIFICATION OF CONDITIONS

The defendant understands that any modification of court-ordered conditions is not a waiver of those conditions or of any consequence of violating those conditions. Violations that have preceded this or any modification of conditions may be considered by the court as a basis for revoking supervised release or probation, especially, but not only, in the event of a future violation, whether any such future violation is similar to or different from any preceding violation.

The absence of this notice does not confer, and should not be interpreted by the defendant as conferring, any rights on the defendant. The absence of this notice does not indicate, and should not be interpreted by the defendant as indicating, any position by the court or by the defendant. Even in the absence of this notice, supervised release or probation may, in the future, be revoked based on violations occurring before this or any other modification of conditions.

Agreed to and acknowledged:



Defendant

Print Name: Kimo Prestera - Johnson

Date: 7/23/08